



January 31, 2000

Mr. Ric Gonzalez
Law Offices of Ronald J. Neiman, P.C.
P. O. Box 777
Lewisville, Texas 75067

OR2000-0311

Dear Mr. Gonzalez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131752.

The City of Lewisville (the "city"), which you represent, received a request for police reports and computer logs for twelve case numbers. You claim that ten of the police reports are excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Section 552.108(a)(1) excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. The city asserts that case numbers 99-09741, 99-11306, 99-11405, and 99-11714 are excepted from disclosure under section 552.108(a)(1). A governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why section 552.108 is applicable. *See* Gov't Code §§ 552.108, .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Generally, an explanation that the information relates to a pending criminal investigation establishes that release would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex.

¹The requestor requested police reports for case numbers 99-11602 and 99-10787. You have not submitted these reports nor argued that any exceptions apply to these reports. Therefore, we assume that you have released the two reports.

Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). The city, however, does not assert that the requested information relates to ongoing investigations. Because case numbers 99-11306 and 99-11714 reflect, on the face of the documents, that the cases are ongoing, we conclude that the information relates to pending investigations and release would interfere with the detection, investigation, or prosecution of crime. Thus, the city may withhold case numbers 99-11306 and 99-11714 under section 552.108(a)(1). However, case number 99-09741 reflects that the case is closed and case number 99-11405 contains no indication, nor have you informed us, of the status of the case. Moreover, you have not explained how release of these reports interferes with the detection, investigation, or prosecution of crime. Thus, the city has failed to establish that section 552.108(a)(1) applies to these reports. Therefore, we conclude that the city may not withhold case numbers 99-09741 and 99-11405 under section 552.108(a)(1).

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. You assert that case numbers 99-10448, 99-11526, 99-11598, 99-11599, 99-11600 and 99-11669 concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable and you may withhold these police reports.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 177. You must release basic information from all of the reports to the requestor. You state that the documents marked "page released" have been released to the requestor. You further assert that the preliminary report in case numbers 99-10448 and 99-11306 have been released to the requestor. Thus, with the exception of the basic front page offense and arrest information and case numbers 99-09741 and 99-11405, you may withhold information from disclosure based on sub sections 552.108(a)(1) and 552.108(a)(2) of the Government Code.

We note that case number 99-11306 contains an Emergency Medical Services ("EMS") report. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 773.091 of the Health and Safety Code provides in part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

* * * *

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Thus, the EMS report, except for the information specified in subsection (g), is deemed confidential by section 773.091 and, therefore, may be released only in accordance with chapter 773 of the Health and Safety Code. *See* Health & Safety Code §§ 773.091-.094. We note that records that are confidential under section 773.091 may be disclosed to “any person who bears a written consent of the patient or other persons authorized to act on the patient’s behalf for the release of confidential information.” Health & Safety Code §§ 773.092(e)(4), .093. Section 773.093 provides that a consent for release of EMS records must specify: (1) the information or records to be covered by the release; (2) the reasons or purpose for the release; and (3) the person to whom the information is to be released. We have marked the EMS reports that are subject to section 773.091 of the Health and Safety Code.

Further, case number 99-11306 also contains medical records. Section 159.002(b) of the Occupations Code, the Medical Practices Act (the “MPA”), provides the following:

A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

Thus, access to medical records is governed by provisions outside the Public Information Act. *See* Open Records Decision No. 598 (1991). The MPA provides for both confidentiality of medical records and certain statutory access requirements. Occ. Code §§ 159.002, .003. Medical records may be released only in accordance with the MPA. Open Records Decision No. 598 (1991); *see* Occ. Code §§ 159.004, .005.² We have marked the documents that are medical records subject to the MPA.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

²Section 159.004(5) provides for the disclosure of confidential information to a person who has the written consent of the patient as authorized by section 159.005. Section 159.005 states that the consent must be in writing and signed by the patient, parent, or legal guardian and specify the medical records to be released, the reasons for the release and the person to whom the information is to be released. Occ. Code § 159.005(a)-(b).

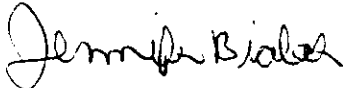
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/ch

Ref: ID# 131752

Encl. Marked documents

cc: Ms. Barbara Wood
1915 Sandy Lake Road
Carrollton, Texas 75006
(w/o enclosures)